

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TRENT FOGLEMAN and COSMETIC
SURGERY CENTER,

Plaintiffs,

v.

CYNOSURE BEAUTIFUL ENERGY,

Defendant.

Civil Docket No. 5:23-cv-01082-SLP

CYNOSURE, INC.'S ANSWER & AFFIRMATIVE DEFENSES

NOW COMES the defendant, Cynosure, LLC, improperly named as Cynosure Beautiful Energy (“Cynosure”), by and through its undersigned counsel, and submits its Answer and Affirmative Defenses to the Petition filed by Plaintiffs, Doctor Trent Fogleman (“Dr. Fogleman”) and Cosmetic Surgery Center (the “Center”) (collectively, “Plaintiffs”).

1. Cynosure lacks sufficient information to admit or deny the allegations contained in Paragraph 1 of the Petition. To the extent that an answer is required, Cynosure denies the allegations contained in Paragraph 1 of the Petition.

2. Cynosure admits that it is a Delaware limited liability company and is headquartered in Massachusetts. Cynosure denies the remaining allegations contained in Paragraph 2 of the Petition.

3. Cynosure lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Petition and, therefore, denies same.

4. Cynosure lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Petition and, therefore, denies same.

5. Cynosure lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Petition and, therefore, denies same.

6. Cynosure lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Petition and, therefore, denies same.

7. Paragraph 7 of the Petition calls for a legal conclusion to which no response is required. To the extent that an answer is required, Cynosure denies the allegations contained in Paragraph 7 of the Petition.

AFFIRMATIVE DEFENSES

Cynosure asserts the following affirmative defenses without admitting or conceding that any or all of the affirmative defenses listed below are defenses for which Cynosure carries the burden of proof.

FIRST AFFIRMATIVE DEFENSE

The Petition and each cause of action therein fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are bound by the terms of the Customer Purchase Agreement executed by Dr. Fogleman and, therefore, Plaintiffs' rights and or damages are limited to those provided by the Customer Purchase Agreement.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' prayers for relief are barred and or must be reduced based on the Plaintiffs' failure to mitigate, minimize, or avoid their alleged damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs breached the Governing Law/Venue provision in the Customer Purchase Agreement by bringing the instant action in the State of Oklahoma.

FIFTH AFFIRMATIVE DEFENSE

Any actions taken by Cynosure's former employee, Kyle Weisensee, to create a side agreement with the Plaintiffs were *ultra vires* and, therefore, Cynosure cannot be held legally liable for his acts.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the parol evidence rule and/or the merger doctrine based on the parties' fully integrated and unambiguous contract.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, are barred, reduced, and/or limited pursuant to applicable statutory and common law regarding limitations of awards, caps on recovery, and setoffs.

EIGHTH AFFIRMATIVE DEFENSE

Cynosure may assert other defenses that become available or appear during the course of additional investigation or discovery in this case. Accordingly, Cynosure reserves the right to amend this answer to assert any such defense.

Respectfully submitted,
CYNOSURE, LLC, Defendant

By its attorneys,
CONNER & WINTERS, LLP

Dated: December 4, 2023

By: /s/ Beth Attaway
Beth Attaway, OBA #35539

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CERTIFICATE OF SERVICE

I, J. Dillon Curran, hereby certify that a true and correct copy of the above Notice of Removal was served upon the attorney of record via the Court's CM/ECF electronic filing and service system.

/s/ Beth Attaway

Beth Attaway